BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

IN THE MATTER OF APPROPRIATE FRAMEWORK FOR BROADBAND ACCESS TO THE INTERNET OVER WIRELINE FACILITIES	§	**CC DOCKET NO. 02-33**
UNIVERSAL SERVICE OBLIGATIONS OF BROADBAND PROVIDERS	§	
COMPUTER III FURTHER REMAND PROCEEDINGS: BELL OPERATING COMPANY PROVISION OF ENHANCED SERVICES; 1998 BIENNIAL REGULATORY REVIEW - REVIEW OF COMPUTER III AND ONA SAFEGUARDS AND REQUIREMENTS	§	**CC DOCKET NOS. 95-20, 98-10**

COMMENTS OF THE OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF TEXAS

NOW COMES THE STATE OF TEXAS (State), by and through the Office of The Attorney General of Texas, Consumer Protection Division and files these its comments on the Notice of Proposed Rulemaking released February 15Th, 2002 in FCC Order No. 02-42. These comments are timely filed pursuant to the Commission's subsequent order in DA-02-704.

The Office of the Attorney General submits these comments as the representative of state agencies and state universities as consumers of telecommunications services in the State of Texas, the enforcer of state laws prohibiting anti-competitive acts and practices, and the enforcer of laws for the protection of consumers in Texas. Our comments are limited to issues that arise directly from the Commission's tentative conclusion as to the nature of wireline broadband Internet access services. We agree with the Commission that broadband deployment is a critical piece of the

telecommunications marketplace and serves to facilitate local competition in that marketplace, a primary goal of the 1996 Federal Telecommunications Act. Effective competition must exist before telecommunications services are further deregulated. Evidence from numerous regulatory proceedings in Texas continues to reflect that the telephone network is still not completely open to competition. For these reasons, it is vital to retain those regulatory requirements which will keep the telecommunications network open to competition and maintain effective consumer protection.

Tentative Conclusion

The OAG first comments on the tentative conclusion of the Commission that wireline broadband Internet access services - whether provided over a third parties's facilities or self-provisioned facilities - are information services subject to regulation under the Title I of the Act. ¶17 of the *Notice.* We agree that while this may arguably be one conclusion, it is not a complete conclusion and does not fully address other important issues which are relevant to meeting the Commission's previously and widely stated goal of advancing broadband deployment.

The categorization of services as either telecommunications services or information services is not mutually exclusive, contrary to the statement in ¶21 of the *Notice of Proposed Rulemaking*. A service provider could easily be selling an information service, which is provided over a telephone line, while still maintaining an obligation to provide open access to its network, due its nature as a telecommunications service. It would be economically inefficient to require each wireline broadband Internet access provider to develop its own independent network and counter to the fundamental philosophy of open access in the FTA to not continue the existence of open access requirements. Further, the amount of capacity available in the newly deployed fiber optic networks is more than almost any individual customer would require. To require competitive carriers

to duplicate this capacity would be the height of folly. Broadband Internet access service is fundamentally both an information service AND a high-speed transport for the data which is the source of the information. It is therefore not easily or correctly categorized as one or the other, but a hybrid of both.

Actually, true information services have no immediate, real-time connection to the customer. They are accessed independently by the information services customer at a time and place of the customer's own choosing. Wireline broadband Internet access services are not information services in this sense as they involve an element of high speed transport to the telecommunications customer and are really just the newest and most innovative means of providing telecommunications services. Because of the inherent duality of the nature of these services it is incumbent upon the Commission to proceed cautiously with an absolute reclassification of these services as purely information services to which few common carrier or consumer protection obligations attach.

Pure Telecommunications Services

As correctly reflected in ¶26, wholesale xDSL and pure transmission services are just the service of providing a high transmission speed, not information, so they are purely telecommunications services. As such, they should continue to be so classified and not included in the new category of services which are of both types. Similarly, IP telephony and e-mail are purely transmission services, and as such should continue to be regulated solely as telecommunications services, even when provided through wireline broadband Internet access. No transmitted information or data is changed or modified in either instance. These services are simply telecommunications services which are being provided at a high speed.

New Regulatory Framework

In its *Notice* at ¶30, the Commission references the potential need for a new regulatory framework. This Office agrees that such a new framework is necessary and that it should be based upon a hybrid of requirements which apply to telecommunications service providers and those that apply to information services. The following telecommunications service provider requirements must continue to apply:

1.Unbundling/open access requirements; and

2.Consumer protection requirements.

The reasons for the continued necessity of the application of these requirements are provided in more detail below.

Unbundling and Open Access Obligations Should Continue to Apply.

We here provide comment as requested in ¶s 46, 52 and 61 of the *Notice*. Due to the continued infancy of the state of development of local competition, the obligations of telecommunications service providers to maintain open access must continue to apply. Otherwise, competitive carriers will continue to fail and there will actually be less availability of service than is currently the case. Competitive carriers must be allowed to interconnect for the purpose of providing their own broadband services over the network. The availability to them of unbundled network elements (UNEs) is also critical to the ability of competitive carriers to compete and thrive. UNEs must continue to be available, even in cases in which wireline broadband Internet access services are involved, for competitive carriers to continue to exist and for the still nascent competitive market to develop.

Consumer Protection Obligations.

These comments are provided in response to the request in ¶s 54 and 57 of the *Notice*.

Customer Proprietary Network Information (CPNI), truth-in-billing, and slamming protections found in the federal statute and the Commission's regulations must continue to apply to these services. They are essential elements of the consumer protections which are expected by customers in the telecommunications marketplace. This marketplace is not yet developed and competitive to the point that consumer protection issues will solve themselves through competition, as the technology and terminology is still too new to expect consumers to be expert enough to adequately protect themselves. Wireline broadband Internet access services should continue to be classified as telecommunications services for these purposes. CPNI protections must continue to be available to protect consumers from unauthorized and harmful uses of their information. Consumers also deserve similar protection from unauthorized changes of their Internet access service providers and correct and understandable information on their bills. The fact that there is an element of information service also being provided to the consumer does not change the underlying rationale for the imposition of these requirements on ALL providers of telecommunications services.

With respect to our comment on the role of the states as requested in ¶ 62, we also affirm the comments of the Public Utility Commission of Texas with respect to the potential effects of the proposed reclassification on the diminishment of a state's authority to not only regulate these services, but facilitate the deployment of broadband services through its regulatory oversight. The Texas PUC has undertaken rulemakings for the express purpose of facilitating broadband deployment and facilitating the consistent treatment of the use of public rights of way by all wireline broadband service providers. (See *Comments of the Public Utility Commission of Texas* already filed in this proceeding.)

Universal Service.

It would appear that all providers of broadband Internet access, regardless of technical mode of connection, should bear a fair share of responsibility for contributing to universal service, but only to the extent that a particular class of providers asked to contribute is also eligible to receive universal service support for its services. This would clearly require a complete redefinition of what sorts of entities are eligible for universal service support.

The Office of the Attorney General of Texas appreciates this opportunity to provide comment on this Notice of Proposed Rulemaking.

Respectfully submitted,

JOHN CORNYN
Attorney General of Texas

HOWARD G. BALDWIN, JR.
First Assistant Attorney General

JEFFREY S. BOYD
Deputy Attorney General for Litigation

PAUL D. CARMONA
Chief, Consumer Protection Division

MARION TAYLOR DREW
Public Agency Representation Section Chief

_____

ROGER B. BORGELT
Assistant Attorney General
State Bar No. 02667960
Consumer Protection Division
Public Agency Representation Section
P.O. Box 12548
Austin, Texas 78711-2548
Voice: (512) 475-4170
Fax: (512) 322-9114

Date: May 3, 2002 E-Mail:roger.borgelt@oag.state.tx.us